IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6423 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SOMABHAI DEVABHAI CHAUHAN

Appearance:

1. Special Civil Application No. 6423 of 2002

MR HS MUNSHAW for Petitioner No. 1

MR SONEGARA for MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/07/2002

ORAL JUDGEMENT

#. Rule. Mr.Sonegara waives service of rule for the respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. At the relevant time, the respondent was serving as a driver. He was subjected to the departmental proceedings on the ground that, on the relevant day, he was driving the vehicle in a drunken condition. The department, after the inquiry, dismissed him from service. The said order was confirmed by the appellate authority of the department. Ultimately, the concerned workman raised the industrial dispute which was referred to the Labour Court, Navsari and was numbered as Reference (LCN) No.75 of 1999. The Labour Court, by the impugned award dated 29.10.2001, allowed the said reference of the respondent workman and passed the order of reinstatement with full back wages and with continuity of service. The said award is challenged by the petitioner Corporation in this petition.

#. It is argued by Mr.Munshaw that, since the respondent workman was in a drunken condition, he was rightly dismissed from service by the department. However, he has fairly submitted that, there is no legal evidence for coming to the conclusion that, at the relevant time, concerned workman was in a drunken condition and was under the influence of alcohol. The Labour Court considered the aforesaid point in the award and found that, no medical evidence is available nor any report is available on the record of the case. Under these circumstances, the Labour Court has rightly passed the order of reinstatement in favour of the concerned workman.

#. So far as the order of reinstatement is concerned, the same is not required to be interfered with. Mr.Munshaw submitted that the respondent workman was serving as a driver, and, therefore, it should be presumed that, he must have earned livelihood during the intervening period considering the nature of his work and it is not possible to believe that, he must have remained unemployed for such a long time.

#. On the other-hand Mr.Sonegara submitted that, this Court may reduce the back wages from 100% to 75%. In my view, and more particularly, considering the nature of work of the respondent workman, it is not possible to believe that, he must not have earned any amount during the intervening period as it can be presumed that a driver must have earned some amount by plying other vehicles. In any case, this is not a case in which full back wages are required to be given. In the facts and circumstances of the case, the respondent workman is required to be reinstated with 40% back wages only. Accordingly, the award of the Labour Court is modified as

regards the payment of back wages and instead of full back wages, the respondent workman will be entitled to 40% back wages for the intervening period. Rest of the award of the Labour court is confirmed. The petition is accordingly partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

#. It is needless to say that, the respondent workman will be entitled to 40% back wages from the date of the award till he is actually reinstated in service.

(P.B.Majmudar,J)
(pathan)